United States Court of Appeals for the Second Circuit



APPELLEE'S APPENDIX

74-1337

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, APPELLEE

v

CARMINE J. PERSICO, JR., APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

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PERSICO, CARMINE

Case #3

STATEMENTS OF JOSEPH CANCELLI
August 10, 1973

TRANSCRIPTION from tape recording of statements made by JOSEPH CANCELLI; Baltimore, Maryland on August 10, 1973.

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-- PERSICO, CARMINE --

CASE #3

STATEMENTS OF JOE CANCILLI TO SAL & FRANK ON

10 AUGUST, 1973

QUES: Joe, we're going to record this conversation that we're going to have with you.

CANCILLI: All right.

QUES: In other words, we're putting it on tape, right? You understand that. And we know you're Joe Cancilli, right?

CANCILLI: I hope so.

QUES: We're special -- we're private investigators for a law firm.

CANCILLI: Well, you know what happened after you were here last time? I had some visitors here.

QUES: From whom? Where were they from?

CANCILLI: The F.B.I.

QUES: Yeah, what'd they want?

CANCILLI: They wanted everything. I had to describe the both of you and everything.

QUES: We did nothing wrong.

QUES: What did the agent ask you, Joe?

CANCILLI: They wanted the picture,

describe you.

QUES: He had our photographs?

CANCILLI: No, not yours.

A week ago it happened.

QUES: A second time?

CANCILLI: Yes.

QUES: What'd they ask you?

CANCILLI: That time, nothing. They were

just curious if you came back here.

QUES: If we came back?

CANCILLI: Or if anybody came back

here.

QUES: They had our names?

CANCILLI: Huh?

QUES: They had our names?

CANCILLI: No, they got your card, though.

Your card here.

QUES: Oh, you gave it to them?

Well, it's perfectly all right. I would

want you to cooperatewith them because we have

nothing to hide.

CANCILLI: They got to be nuts.

QUES: What we're looking for, Joe --

QUES: What did they say to you?

QUES: -- is the truth. That's all we're

looking for. We've been here before and we've spoken to you and you told us a story before. Right?

Since that time we understand that a Sal Persico,
a cousin of Junior Persico, was down to see you.

Sal Persico told us to go to Baltimore and we beg
you to be truthful. He begged you to be truthful
and we're asking you to be truthful.

QUES: He's a retired New York City policeman.

CANCILLI: He is?

QUES: No, Sal Persico is a retired
New York City policeman.

GANCILLI: Then they picked you. They got it all screwed up.

QUES: Why, what happened?

CANCILLI: The F.B.I. thinks he's the retired policeman.

QUES: He is.

QUES: They said that to you?

CANCILLI: Yes. A private detective, right? They had me nuts over here. You all got me nuts.

QUES: Why, what was it that they said to you about us?

CANCILLI: They described you to the T.

You know. And then another guy was here, some kind
of prosecutor or something like that.

QUES: Let me explain something to you, for the reason of this meeting. Well, let me finish what Halper [Phon.] started. He was down to see you, right? And Sal Persico told us that you're now prepared to tell us the story, the truth.

What we want from you is the truth.

Have any threats been made to you?

CANCILLI: Not now, no.

QUES: No threats were made to you

now?

Any promises made to you?

CANCILLI: No.

QUES: Was any offer of money given to

you?

CANCILLI: No.

QUES: No offer of money was given to

you?

CANCILLI: No.

QUES: Your answer is no.

CANCILLI: [No response.]

QUES: And nobody from the Persico family threatened you?

CANCILLI: No.

If we're putting this thing on tape let's get something straightened out --

QUES: Let me explain something to you,
Joe. We have a license to protect. We've got our
families to protect. We're both married men and
we have children. If there's any hanky-parky going
on in this case I'm telling you right now, I want
to know. Now, I'm telling you, I want the truth
from you and nothing but the truth.

If anyone has offered you any money

or threatened you in any way --

CANCILLI: No.

QUES: Okay. All that we're concerned about -- because we're licensed by the State -- I showed you our credentials the last time we were in here. And we're looking for the truth. The story you told us the first time -- right? -- I don't know if that was the truth or not. We were told to come back here to speak to you.

This is what we're looking for is only the truth.

CANCILLI: One thing, you came here, you came here with my uncle. You went upstate to see my uncle.

QUES: We didn't.

CANCILLI: You didn't go upstate to see my uncle?

QUES: No, we did not.

CANCILLI: See, I'm in the middle on this goddamn shit. You understand me, too.

This is a helluva crazy predicament. I got -
first of all what's-his-name's cousin come and

see me. Right?

QUES: Who's that?

CANCILLI: [No response.]

QUES: Sal Persico. Sal Persico.

CANCILLI: Right. He come and see me.
Then I have the F.B.I. come and see me. I'm going fucking crazy over here.

QUES: All we want from you is the truth.

Now anything you tell us, we're going to make you sign an affidavit, we're going to tape it, it's going to --

CANCILLI: Right, I understand.

QUES: -- be used in a court of law.

CANCILLI: I understand that.

QUES: Okay. Are you prepared for this?

Because we have the affidavit made up and it has
to be witnessed.

And the statement says:

"I, Joseph Cancilli, being advised by private investigators Salvatore Reali and Frank Santulli [Phon.] that they are representing Carmine Persico, Jr. -- " -- and you give us per-

mission to record by tape recorder all questions asked and all answers given by you.

QUES: Another thing is, did we at any time ever offer you any money?

CANCILLI: No.

QUES: Did we threaten you at any time?

CANCILLI: No.

I told them guys that, too, when they was here. I told the F.B.I. that when they was here.

QUES: Right. Because if you want to call an attorney, if you want to call the F.B.I., you are welcome to call anyone you'd like.

CANCILLI: No, no, I don't know nothing about that.

QUES: Okay.

CANCILLI: But they got me crazy. They was here two days ago.

QUES: Who, the F.B.I.?

CANCILLI: The F.B.I. was here.

QUES: What did they say to you and what did you say to them?

CANCILLI: They asked me if anybody was

down here. I told them, no, nobody was here.

QUES: All we want from you is the truth.

And I'll tell you right now, we ain't going to
accept anything but the truth. And we're going to
question you very thoroughly and go over your story.

And if you're prepared for this, we'll have to get
this affidavit signed and witnessed by either a
neighbor or your wife or your daughter or anyone.

CANCILLI: Naturally.

QUES: Now, suppose you tell us what the real story is, the truthful story? Regarding this case.

fucking headache to me. For years.

What was the real story with these license plates that I got involved with.

QUES: You tell us.

CANCILLI: You tell me, because I really don't know what the fucking story is.

QUES: I don't know what the story is.

QUES: How would we know? We weren't

present. This goes back when?

CANCILLI: No, but how -- how these license plates are involved in this case, that's what I want to know.

QUES: Well, we don't know.

CANCILLI: You don't know?

QUES: You have to tell us what took place when you got stopped.

You told us when we were here the first occasion that you were stopped by a New York State Trooper, your car --

CANCILLI: No, my car broke down.

QUES: -- Your car broke down, right.

And he stopped you.

CANCILLI: He come and helped me.

QUES: He come and helped you. And at this time he checked the plates out -- Is this correct?

CANCILLI: That's correct.

QUES: He found that the plates were either stolen --

CANCILLI: Right.

QUES: -- or off another automobile.

And what took place at this time? We weren't present.

CANCILLI: Right, I understand that.

But I thought maybe you knew something about this
damn thing.

QUES: No, we don't.

neither about that.

QUES: What we're trying to do is find out from you what the truth is in the matter.

of these guys. I never knew none of these guys,
actually. Only met that one guy one time. Then
the next thing I know, I got picked up, I got locked
up and every other goddamn thing.

QUES: Well, what were you picked up and locked up for?

CANCILLI: In other words, the truth is that I was actually threatened with them license plates. If I wouldn't have went along with the arresting officer in New York I would have got shanghaied. I would have got shanghaied on a trial

anyhow, you know that.

QUES: Who was the arresting officer?

CANCILLI: What the hell is his name?

QUES: Well, who tried to shanghai you?

CANCILLI: They did shanghai me.

QUES: Who? The New York State Troopers?

CANCILLI: No, the detective in New York

did.

QUES: How did he shanghai you? You mean, by "shanghai," you mean that he framed you?

CANCILLI: Yeah, in a way he framed me. In other words, all that testimony that I gave in that trial was actually put up, let's put it that way.

QUES: Was put up by whom?

CANCILLI: It was put up by the detective.

I had to say what the hell he wanted me to say or
otherwise I'd wind up in jail.

QUES: In other words, the detective threatened you?

CANCILLI: Yeah, he threatened me. He scared the shit out of me, to tell you the truth.

QUES: How?

CANCILLI: Because he threatened to get me involved with these goddamn license plates and he was going to put me in jail for 30 fucking years.

QUES: How would license plates put you in jail for 30 years?

CANCILLI: That I don't know. I never did find out what the hell these license plates was involved about.

QUES: At any time were you ever hit by anyone?

CANCILLI: No.

QUES: They never abused you in any

CANCILLI: No--no.

QUES: You weren't beaten or socked around by the detective?

CANCILLI: No. no.

QUES: But you were threatened.

QUES: Were you threatened in connection with a murder case? Something to do with the Nach?

way?

CANCILLI: Yeah. Something to do with the license plates.

QUES: License plates? Well, tell us about it.

CANCILLI: That's where -- I don't know that much about it. See, the only thing I know, I took -- I had a car, I broke down with the goddamn car and these plates evidently were supposed to be involved in a murder case or some goddamn shit, to tell you the truth.

QUES: Well, who told you these plates were involved in a murder case?

CANCILLI: I'm trying to think of the cop's name.

QUES: Was it Detective Bartels [Phon.]

CANCILLI: That's him, that's the one.

QUES: He told you that those license plates were involved in a murder case?

CANCILLI: No, he tried, he didn't
want to -- No, he told me -- he involved me with
hijacking first. Which I wasn't even there. I
don't even know nothing about the goddamn shit.

It just happened to be when I broke down with this car there was a hijacking going on five miles away from me, in the area.

QUES: And he threatened to involve you in this hijacking?

CANCILLI: Yeah, he threatened to involve me.

QUES: How did he threaten to involve you?

CANCILLI: Oh, Christ! He told me if

I wouldn't go along with him, he'd get me roped

into this goddamn -- the whole deal. In plain old

English.

QUES: That if you didn't go along with telling a story that he wanted you to tell the authorities, he would involve you in the hijacking case?

CANCILLI: I would be involved, yes, yes.

nothing about this shit, to be honest with you.

QUES: In other words, you knew at that

time when you took the stand in the Grand Jury or at the trial, that you were perjuring yourself, is that correct? That you were telling your story, that a Detective Bartel put words in your mouth to testify to?

CANCILLI: Yeah, actually.

QUES: Is it so, or not?

CANCILLI: It's the truth, yeah.

QUES: It is the truth. In other words, the testimony you gave at Carmine Persico's trial was not true?

CANCILLI: The only thing that was involved -- the whole statement that I gave in that trial was truth as far as the car was.

Beyond that, I don't know nothing about that.

The only thing I did was pick up a car.

QUES: You testified, I believe, in the trial that there came a time when you went to a club --

CANCILLI: Right, right. On Third Avenue, right.

QUES: Was Mr. Persico present at that

time?

QUES: Carmine Persico.

CANCILLI: Yeah, I know who you're talking

about. He was in the club, yeah.

QUES: He was in the club?

CANCILLI: See, I didn't go there to see

him.

QUES: You didn't go to see him?

QUES: But he was there at the time?

Did he have any conversation with you at

al1?

CANCILLI: Not with me, no.

QUES: No.

Did he make some comments? Did Carmine

Persico make any comments at the time?

CANCILLI: Oh, Christ, it's so many years.

I didn't go there to see him.

QUES: Did you hear him say anything?

CANCILLI: Oh, Christ. It's so fucking

long ago.

I really don't remember, to tell the truth, if he said anything or not.

But I didn't go there to see him. I went there to see another guy.

QUES: Who did you go to see?

CANCILLI: I went to see Ralph Spiro.

[Phon.]

QUES: Do you recall how many men were present that day in the club?

CANCILLI: That detective was in the club when I went there.

QUES: Detective Bartel was present in the club when you were there?

CANCILLI: Year, that's how he knew me.

QUES: Did he say anything to you?

cancilli: No. But the next thing I know, when I got picked up with that goddamn car, he come to Newburgh Jail, I was at, and he knew mo from being down the club.

QUES: And what did he say to you?

CANCILLI: What the hell did he say?

I had a letter in that car from Ralph Spiro that I was supposed to mail for him. And I forgot to mail the sonuvabitch. And it was out behind the seat --

out of Sequence or the glove compartment -- wherever the hell it was at.

QUES: What was the letter about?

CANCILLI: No, it was just a personal letter.

QUES: Oh, a personal letter.

QUES: And what did Detective Bartel say to you at the Newburgh Jail?

CANCILLI: Well, the first thing, they wouldn't let me out on bail. Because he froze my bail. And that's when they came in with F.B.I. agents and all. And that's when he told me that I was supposed to be more or less a patsy for this hijacking that happened a few miles away from me.

QUES: Did Detective Bartel say anything to you about a murder case?

CANCILLI: No, he just said -- Well, yeah, he said the license plates was involved in a murder case, or something.

QUES: He said the license plates were involved in a murder case?

Did he threaten to involve you or arrest

you in connection with that murder case?

CANCILLI: No, not at that time.

QUES: Did he ever threaten to arrest

you or involve you in that murder case?

CANCILLI: Down here.

QUES: Down where?

CANCILLI: Down here, the F.B.I. office down here.

QUES: What did he say to you that time at the F.B.I. office here in Baltimore?

CANCILLI: He thought I was a fence over here for hijack stuff.

QUES: Right.

CANCILLI: See, if I wouldn't go along with him, he was going to get me roped in.

QUES: Well, what do you mean by getting you "roped in?"

CANCILLI: In other words, he wanted me to be a Federal witness for him.

QUES: Well, did he threaten you if
you didn't become a Federal witness?

CANCILLI: Yeah, he actually threatened

artellen of his Early if the 1 cm

me. You might as well say he threatened me.

QUES: How did he threaten you?

CANCILLI: Well, when he first come and talked to me, he told me, he said if I don't agree with him he's going to get me 30 years in jail.

QUES: What was the threat me made, that he was going to charge you with if you didn't cooperate with him?

CANCILLI: He was going to involve me in this case.

QUES: What case?

CAMCILLI: In this case in New York.

QUES: A murder case?

CANCILLI: No, I don't know what kind of case it was. I know there was five guys on trial

or six guys on trial.

QUES: A hijacking case.

CANCILLI: A hijacking case.

In other words, I was supposed to be an ace in the hole. He looked for ma for a year. He looked for me -- I left New York, I went to Las Vegas.

QUES: Did he tell you how to testify at the trial?

CANCILLI: Yeah, he told me how to testify all right.

QUES: What did he tell you to say at the trial?

Bartilo?

cancilli: That I was in the club the same time that he was in the club. I was present in the club the same time he was present in the club.

That I was talking to Junior, which I wasn't talking to Junior. I was talking to Ralph.

QUES: You never spoke to Junior at any time?

CANCILLI: Hello, goodbye; that's it.

QUES: You didn't hear Carmine Persico

or Junior Persico make any comments or statements in the club?

CANCILLI: No.

QUES: Would you say that the testimony you gave at Carmine Persico's trial was not true?

CANCILLI: Basically, yeah.

QUES: That it's not true, it wasn't

true.

CANCILLI: No, it wasn't true. I was scared to death, for Christ's sake. What would you do?

QUES: You were scared of what?

CANCILLI: You're scared to death, what the hell would you do?

QUES: Like, what did you say at the trial that you feel was not true, that you can tell us the truth about now?

CANCILLI: None of that testimony was brought up to the trial. [Sic] If I recall it right.

QUES: Did you ever testify before a Federal Grand Jury?

CANCILLI: No.

QUES: You never testified at the trial?

CANCILLI: No, I was only in there ten or fifteen minutes.

QUES: Before a Grand Jury or the

trial?

CANCILLI: I don't know one from the other to tell you the truth.

Surgians.

QUES: Well, were you up before a judge or before a panel --

CANCILLI: Before a judge.

QUES: Before a judge. So that was at the trial.

CANCILLI: That was at the trial, yes.

That was the first time.

QUES: That was the first time.

Where did that take place, Joe?

CANCILLI: It took place in the Federal -it was the Federal Building, New York, Manhattan.

QUES: Well, what is the true story now? Suppose you tell us.

thing I did is pick up a lousy car that this guy gave an uncle of mine, and I did him a favor to drive the sonuvabitch. It cost me time in jail, it cost me a fine, it cost me my license in New York -- they revoked my license in New York -- just to do a lousy, fucking favor. And the next thing I know, I don't hear nothing for a couple of years, then all of a sudden I have the F.B.I.

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call me up. I thought it was a gag when they called me up. Because the guy's name was John Hopkins. And they got a John Hopkins Hospital here. And I thought it was a gag. And it was the F.B.I. And they told me either I would come up there or they would come down here and get me.

Then they tell me there was two guys that wanted to see me. But they didn't say who they was or nothing. So when they held me up there and then these guys came on an airplane later that afternoon. And one was that detective.

QUES: Who came down on an airplane?
Detective Bartels and the Federal prosecutor?

CANCILLI: Right. The United States prosecutor, right.

QUES: Did he threaten you in any way?
The United States prosecutor.

CANCILLI: Well, they told me if I didn't go along with them, for Christ's sake, I was going to get roped in.

. QUES: By "roped in" you mean being framed or getting involved in another crime that

you actually weren't involved in?

CANCILLI: All they told me, they said they thought I was involved with this gang up in New York. And I tried to prove to them.

I said, I tell you what, let me call the guy's brother out. This Ralph Spiro's brother up.

And he's the one that gave me this goddamn car.

And they wouldn't let me call him up.

QUES: Now, how did the Federal prosecutor threaten you?

got a subpoena. They subpoenaed me to go to New York.

QUES: No, you said the Federal prosecutor tried to rope you in. I don't understand what you mean by that.

CANCILLI: The Federal prosecutor told me I have to go up there as a witness. When he first come here he says I don't have to go up there as a witness, he says, "You'll never hear from me again."

And I didn't hear from him for a couple

of months. Next thing I know I have the F.B.I. here with a subpoena to go to court.

QUES: And the testimony you gave at that trial you're telling us now was not the truth at that time?

CANCILLI: Not anything was the truth.

The only thing that was truthful about it, that

I picked up a car, that's all.

QUES: Everything else was perjury testimony except the fact that you did pick up the car?

CANCILLI: I don't want to wind up in perjury, for Christ's sake. I'll wind up going to jail over this goddamn shit.

QUES: Well, you didn't tell the truth.

Did you tell the truth or you didn't tell the

truth?

CANCILLI: Well, I told what I was supposed to tell them, put it that way.

QUES: Well, who told you to make these statements?

CANCILLI: The United States prosecutor.

And this detective, Bartel.

QUES: They told you to make certain statements? Whatever you testified to at the trial they told you to testify to that?

CANCILLI: Right.

QUES: Is that what you're telling me?

CANCILLI: Right. See, I don't know nothing about this shit. But I'll tell you, I was stuck in the middle. What the hell was I going to do?

QUES: Joe, let me explain something to you. You realize how important this is to us.

We were down here --

CANCILLI: Right, now I don't want to -All right. Now you found out it was all set up,
but I don't want to wind up perjuring myself going
to court again.

QUES: What was all set up?

CANCILLI: None of that whole testimony
I gave except me picking up a lousy car was the
truth. The rest of that, that was all set up.
They told me what to say in court. What was I
going to do?

QUES: Who told you what to say in court?

CANCILLI: The prosecutor told me what to say in court.

QUES: What did he tell you to say in court?

agree to say in court, well, that I seen the detective down there -- Which I did see the detective down there. It was the only time I was in that place.

Survey up

QUES: What else did he tell you to say in court?

CANCILLI: And -- It's been so long ago.

QUES: Did he ask you to say that Mr.

Persico spoke to you in the club? Did he make you
perjure yourself to that effect?

CANCILLI: Well, he did say hello to me. That wasn't perjury there. It may -- He did say hello and goodbye.

QUES: That's all he said to you?

CANCILLI: He didn't have no conversation with me, no.

OUES: No conversation at all?

CANCILLI: NO.

QUES: And you didn't hear Carmine
Persico make any statements or comments in the
club?

CANCILLI: No.

QUES: We were here approximately five weeks ago, six weeks ago --

QUES: Would you say?

CANCILLI: Right.

QUES: -- Approximately?

CANCILLI: Yeah, around a month and a half ago.

QUES: Around a month and a half ago.

At that time you gave us a statement, Joe.

CANCILLY: Correct. I gave you the statement exactly what happened.

QUES: Yeah. That wasn't true then?

CANCILLI: It was the truth seven years ago, eight years ago. What am I going to do, what

QUES: That's why we want to get the truth from you now.

am I supposed to do, tell me.

CANCILLI: The truth was, I don't even know the man.

QUES: But Bartels and the U.S. Attorney put you up to making these statements?

CANCILLI: Correct.

QUES: And these statements weren't true except as they relate to the --

CANCILLI: The only statement was true, was that I wasin that club. I did pay a visit to that club, that's all.

QUES: To see Ralph Spiro.

CANCILLI: I stopped to see Ralph Spiro, yeah.

QUES: In other words, you're saying all your other testimony wasn't true.

CANCILLI: The only thing was true of that testimony was I did pick up a car, I broke down with a car, I stopped the State Police to help me out with the car. They found out that the plates didn't match the car. The next thing I know, I got locked up. That was it.

QUES: But all of your other testimony at

the trial was not true.

CANCILLI: No.

QUES: Wasn't true.

CANCILLI: No, it wasn't true.

QUES: Were you threatened at any time either by Detective Bartels or the Federal prosecutor that you would be involved in a murder case revolving about that Nash car that you picked up?

CANCILLI: No, not involved in a murder case, but would be involved in this case, whatever it was.

QUES: Not a murder case.

CANCILLI: I really don't know what the charges in that case was.

QUES: Were you slapped around at all?

Did anybody at any time --

CANCILLI: No, nobody manhandled me, no.

QUES: Do you remember the U.S. prosecutor, his name?

CANCILLI: Italian fellow.

QUES: That would be important to us.

CANCILLI: Christ, it's been so long
ago.

QUES: I'm very curious about one thing,
Joe. How come you never came forward with the
truth, prior? Now, I'm saying this honestly and
sincerely. I want the truth and nothing but the
truth. Since the last time we have been here, did
anyone at any time threaten you or offer you any
money? If so we want to know. Because we'll
bring it to the authorities.

You haven't been threatened, your family hasn't been threatened, you haven't been offered any money?

CANCILLI: Right.

QUES: At any time?

CANCILLI: No.

QUES: No one called you up, no one threatened you --

CANCILLI: I got [inaudible phrase.]

QUES: Okay. But no one has called you on the job, no one has threatened you, no one has

QUES: Were any promises made to you by any member of the Carmine Persico family?

CANCILLI: No; none.

QUES: No promises were made to you?

QUES: And this fellow that came to see you, this retired New York City policeman, Salvatore Persico, right?

CANCILLI: Yeah.

QUES: -- What was your conversation with him at this time?

me to tell the truth on this case. As a matter of fact, he begged me to tell the truth on this case. That's the truth of the whole matter.

QUES: Would you now be prepared -
CANCILLI: Half the time I couldn't -
I -- I was stuck in the middle. They could think

I'm involved in it. I don't know the first goddamn

thing about the sonuvabitching thing. All I did

was a lousy favor, it jeopardized the whole life

of New York State. I wind up in jail over the

goddamn shitting thing. Then I wind up as a Federal witness on top of it. Until this day, as long as that case went on, I still don't know what the hell it was all about, to tell you the truth.

QUES: But you were told by the Federal prosecutor and Detective Bartels, what to say at the trial?

CANCILLI: Right.

QUES: So that all of your testimony at the trial was what? Either Detective Bartels or the Federal prosecutor told you to say?

CANCILLI: Right.

QUES: And that was not the truth except as it relates to the car and the license plates.

CANCILLI: Right. That was all I was concerned with was the car. I didn't know nothing about the rest of the shit.

When they came to see me the only thing they was interested in, about the car or the license plates. That's what they talked to me about. The car or the license plates. Because he

came up to the jail where I was at and come and see me. And asked me about the car and the license plates.

QUES: Well, all I know is, we made a second trip back here to see you, Joe. Because the first time we were here you told us a different story.

CANCILLI: I told you I don't want to get involved in this shit.

QUES: I realize you're a married man and a family man and you don't want to get involved in it.

CANCILLI: Right.

QUES: You realize that a man could possibly go away for fourteen years of his life on --

CANCILLI: That's why I agreed --

QUES: -- on testimony that was perjured.

And that's why I want to make sure -- I want to

protect my license -- we have an excellent reputation as investigators in the field --

CANCILLI: Right.

QUES: And we want to make sure when we leave here, before we bring this to the proper attention of anyone, that no one has threatened you or offered you any money -- We have never threatened you -- we have --

CANCILLI: No, the only thing -- wait a minute.

QUES: Yes?

CANCILLI: The only thing he held above my head there at that time there, if I wouldn't go along with him, he was going to involve me with the license plates.

QUES: Bartel.

QUES: And what did he say about those license plates?

\$

CANCILLI: He mentioned something about they was involved in a murder. But that's all he mentioned. I don't know anything more about that. I don't know the first thing about it. The only thing, I told him -- I told him the truth exactly what happened, that I didn't know the license plates was bad. If I knew the license plates was bad,

why the hell would I stop the State Police to come over and help me. That's common sense, right?

QUES: But Detective Bartels, are you telling me that Detective Bartels told you he was going to involve you with those license plates which were involved in a murder case?

CANCILLI: If I didn't go along, right.

QUES: With the story.

CANCILLI: What was I going to do?

QUES: And the U.S. Prosecutor also went along with this.

Did the U. S. Prosecutor ever discuss this with you in front of Detective Bartels?

CANCILLI: Oh, yeah, right here.

QUES: Right here.

QUES: About the license plates being involved in a murder case?

CANCILLI: No, he came down and he took this testimony.

QUES: Yeah.

CANCILLI: Right? Then they told me that I wouldn't hear from them no more. Right?

Do grange -

And then a few months later I got subpoenaed to go to court.

QUES: Did the Federal prosecutor at any time threaten to involve you in a murder case as a result of those license plates?

CANCILLI: No, not the Federal prosecutor,

QUES: Just Detective Bartels?

CANCILLI: He was the one actually running the whole case there.

QUES: And everything you've told us today is the truth?

cancilli: It's the truth, no use lying about it. As far as seeing that man do fourteen years in jail, I don't want to see him do fourteen years in jail.

The first thing, I don't even know what

-- I don't even know the guy. Why the hell should

I make a guy go away for fourteen years?

That's why I agreed with his cousin to tell the truth about the damn thing.

QUES: Why haven't you come forward

mornitud

before, Joe?

CANCILLI: Because -- wait a minute.

QUES: Leave that on.

CANCILLI: Go down and see if that car.

is [inaudible portion.]

VOICE: [Inaudible.]

CANCILLI: Yeah, go see if it's running

okay.

QUES: We need a witness.

QUES: Yes, we need a witness.

CANCILLI: Oh, come here, honey.

Well, you understand the predicament I

was in.

QUES: Joe, I'll ask you to sign the statement that I read to you before, and we have two witnesses to sign it, please.

QUES: Let's get their full names and their relationships.

CANCILLI: Now, I have one question, before I sign this thing.

QUES: Yes?

CANCILLI: You keep talking about perjury.

What happens if I go into court now and tell the truth. Can I be perjured on this damn thing?

QUES: That's up to Bartels and the U.S. prosecutor. If they told you to say something that was not true, I'm sure the authorities --

CANCILLI: Because I don't want to wind up in jail with that -- you know.

QUES: No, of course.

QUES: Of course not, but we want the truth. Now, what you're telling us is the truth?

CANCILLI: Right.

QUES: That's all we're concerned with is the truth.

CANCILLI: You was there.

QUES: Who was there?

CANCILLI: My son was here.

QUES: He was present when this took place?

QUES: This statement merely says that you give us permission to record this conversation with you, that's all this says.

CANCILLI: Okay, here we go. Borosold

[Phon.]

QUES: And who are these two witnesses?

CANCILLI: There, you sign this, Mike.

VOICE: I'm his daughter-in-law.

CANCILLI: This is my daughter-in-law,

that's my stepson.

QUES: What's his name?

CANCILLI: Michael Dauk. [Phon.] He

won't have the same name as my name.

QUES: Let's get that down, and where he resides.

What is your name, young lady?

VOICE: Victoria.

QUES: Victoria?

QUES: Where do you live, Michael?

VOICE: 1115 South Ehrpe [Phonetic]

E-h-r-p-e. [This indistinct.]

QUES: 1115 --?

VOICE: South Ehrpe.

QUES: You live there with your wife?

CANCILLI: He'd better live there with his

wife. They got married a couple of weeks ago.

QUES: Your wife, together?

QUES: Okay. Thank you. Thank you for witnessing this document.

CANCILLI: Look, if that carnival ain't open, go up and stop up to see Russ Shoppe [Phon.] and tell him to come down this bar. That permit and all has been approved.

VOICE: All right.

QUES: So that, Joe, everything you've told us today then is the truth?

CANCILLI: It's the truth. I never told it before because I was scared to death.

QUES: What's today's date?

QUES: Today is August 10th, 1973, it is now 6:10 P. M., and we are now here interviewing

Joseph Cancilli at his residence at 135 North Elwood in the City of Baltimore, Maryland.

CANCILLI: Now what happens? You're in the business, you could help out. I --

[Tape stop/start.]

QUES: ... in this case. And he told the truth, that's all. Definitely told the truth.

CANCILLI: Well, I just hope I don't get

in no trouble over the goddamned thing.

QUES: Joe, let me tell you something.

There is no reason in the world for you to get into trouble. You're telling the truth, you have nothing to worry about.

QUES: You have nothing to worry about.

Believe me when I tell you that.

Only when you lie, you've got something to worry about. If you're telling the truth, you have nothing at all to worry about.

CANCILLI: Well, this thing's been going on for years and years.

[Tape stop/start.]

QUES: ... we have been here. You have nothing to hide and nothing to fear. This is not going to be another Watergate. You follow me on that?

CANCILLI: Well, they was here a couple of days ago.

QUES: If they want to speak to you,
you tell them that we've been here and we spoke to
you.

QUES: You have nothing to hide. Tell them the truth, like we're going to.

QUES: Tell them the truth just as you told us the truth.

CANCILLI: Well, like I told you, when what's-his-name's cousin came to see me. He sit down, he talked to me. He told me, Christ, all I want you to do is to tell the truth. The guy practically begged me. But what the hell, I got nothing against that guy. What the shit I want to see a guy do fourteen years in jail for?

QUES: That's right. Fourteen years is an awful long time.

CANCILLI: Like I told him, I'm stuck in the middle of a goddamn war between one group wants the guy to go to jail, one group wants to get the poor sonuvabitch out. What am I supposed to do? Tell me.

QUES: Like, the thing I would suggest, you just tell the truth, no matter who questions you.

QUES: If anyone questions you and you

tell them the truth, Joe, could I tell you this, you have nothing to worry about. Because the truth, you never go wrong with that.

CANCILLI: Well, that's what I was told eight years ago, ten years ago.

QUES: If any agents come around to speak to you, you tell them that we have been here to see you. My name is Sal Reari, my partner's name is Frank Santulli. We're both private investigators. And you have nothing to fear.

QUES: And if anyone threatens you.

If anyone threatens you, whether it be Detective

Bartels or the U. S. prosecutor or the Persico

family, we want to be notified immediately.

[Loud traffic sounds.]

CANCILLI: What the hell kind of business are you in, the kind of business to carry a gun?

QUES: Well, I always keep it in the glove compartment or in my gun [indistinct word].
We came out here --

CANCILLI: Gets to be a regular court.

QUES: Yes, I --

CANCILLI: It's a [inaudible word] town over here.

QUES: What's the best way to get back to the airport, Joe?

CANCILLI: Oh, here we go.

The best way is to take a cab. Now, if you can get a cab this time.

QUES: All right, where?

CANCILLI: Let's find one. You find one up on the corner last time?

QUES: No. Called a cab. Had to get one by phone.

CANCILLI: Oh, come on up, I'll get it.

I only wish this sonuvabitch thing was --

QUES: We're only here for one reason, to get the truth. We can't have this man spend fourteen years of his life in prison for something with which he had nothing to do.

[Traffic noises.]

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EXHIBIT # 2

-72-

Sworn to before me this

31st day of October, 1973.

STATE OF NEW YORK)

COUNTY OF NEW YORK)

JOHN CURATELLA being duly sworn, deposes and says:

- 1. That I reside at 1847 Atlantic Street, Belmore, Long Island, New York.
- That I was called as a witness for the Government in the case of U.S.
 Carmine Persico, Jr., et al.
- 3. That prior to my being called as a witness by the Government in the above stated case, I was interviewed by agents working for the Federal Government and by an Assistant United States Attorney both at my place of business, at the U.S.. Attorney's office, and at F.B.I. Headquarters.
- 4. I was questioned by each of the above stated persons as to my knowledge of persons or parties who may have rented trucks from Leonard Trucking Rentals, the firm by which I was employed at the time and which trucks were jused in a hijacking. They asked me, in essence, whether or not a Peter Butt had renied a certain truck from my firm and whether I could identify this person. I told them that I probably could. They showed me one picture of the person of when I now have come to know as Mr. Hugh At first I told them that I did not recognize the man. The agents told me to stop bullshitting them and that they knew I had been previously arrested and convicted for a crime of hijacking and that if I did not want to get myself in trouble in connection with this hijacking I better tell them the truth as they believed it to be, that the picture I was shown was a person I knew as a Mr. Peter Butt who had rented the truck Although I know I had nothing to do with the hijacking, I became in question. frightened and fearful that I would be involved in this crime because of my post record. After continuous questioning and suggestions in the manner in which I have described above, I finally told them that the picture that they had shown me originally was that of a person whom I knew as Peter Butt.

EXHIBIT # 3

Motion Pages 73-74

5. That after speaking to the manager of my firm and to other persons about the pressure I was enduring, I decided to put aside my fears and follow my conscience. I therefore testified truthfully at the trial, and in assence, stated that none of the defendants present at the trial rented a truck from my firm and none were known me as Pater Butt.

John Curatella

Sworn to before me this

day of July, 1973

Notary Public, State of Hew York

Qualified in filosopa County Commission Expires March 30, 1974 DEATE OF NEW YORK)

ARTHUR L. MASS, Deing duly sworn, deposes and says:

That I has an attorney at Lovend a member of the firm of Lonefsky.

Gallina, Mass. Berne & Bollman, co-counsel with Maurice Edelbaum, Esq.
on a motion to vacate and set aske the judgment rendered against Carmine
Persico, Jr. on June 3, 1969 by Judge Dooling.

That on June 25, 1973 I visited the Federal Prison at Marion, Illinois and spoke with one Alphonse Castaldi (Prison No. 23703-138).

That Alphonse Castaldi told me that in and around December of 1964, he was a fellow inmate with Gaspar Vaccaro in the Texicana Prison.

That he (Castaldi) told me that he had had several discussions with Vaccaro concerning testimony that Vaccaro had given in a hijacking case which involved a person named Persico.

That Castaldi stated that Vaccaro said he had been mistaken in his testimony but did not correct it because after reporting this error to the prosecutor, the prosecutor warned him that his (Vaccaro's) position would be jeopardized if he changed his testimony. Vaccaro also told Castaldi that friends and relatives gave him (Vaccaro) the same advice.

The Castaldi stated that at the time Vaccaro said these things, he (Vaccaro) was waiting to go home on parole. Vaccaro told him (Castaldi) that he would correct his mistake, but he never said how this would be done.

That Castaldi stated that he later met Carmine Persico, Jr. at Marion, Illinois and realized that this was the Persico who Vaccaro made reference to in his testimony concerning a hijncking case.

ARTHUR L. MASS

Sworn to before me this 30th day of October, 1973.

Controls 4 12 5

-75-EXHIBIT # 4

RECEIVED

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MEW YORK

MAY 16 1974

X

APPELLATE SECTION CRIMINAL DIVISION

UNITED STATES OF AMERICA

- against -

73-C-1625 (60-CR-147

CARMINE J. PERSICO, JR., et al.,:

MEMORANDUM and ORDER

Defendants. :

APPEARANCES:

MAURICE EDELBAUM, ESQ. (GINO E. GALLINA, ESQ., of Counsel)
for Defendant-Movant Carmine J. Persico, Jr.

JAMES W. DOUGHERTY, ESQ. (EDWARD J. BCYD, V, ESQ., United States Attorney, DENIS E. DILLON, ESQ., Attorney in Charge, of Counsel) for the Government.

DOOLING, D.J.

The present motion is put forward as a motion to vacate and set aside the judgment of conviction on the ground that it was procured by methods that constituted an invarion of defendant's constitutional right to due process in that the Government consciously used testimony that it know to be false and erroneous (that is, the testimony of Joseph Louis Cancelli) and applied improper pressures upon and made an improper use of the testimony of John Curatella. The motion

re-emphasizes the earlier attacks made on the testimony of Vaccaro, the purported recantation of which and the attacks upon which have been the subject of earlier unsuccessful motions to set aside the judgment and verdict.

The evidence at the trial, principally coming from Gaspar Vaccaro for its narrative content, was that on the night of July 27-28, 1959, (with certain others) the defendants Persico, McIntosh, Albanese and Spero, along with the witness Vaccaro, planned to hijack a truck which Vaccaro had "spotted" being heavily loaded at the Akers Terminal; that a Buick automobile, stolen from one Rossi some days earlier and the license plates of which had been taken off and put in the car in favor of substitute license plates, was used to follow the truck that 'Vaccaro had "spotted" when it left the Akers Terminal, with Albanese, Spero and Vaccaro riding in the stolen Rossi Buick; that the truck was, indeed, hijacked, defendant Spero transferring to the truck to drive it away from the place where it was taken and defendant . Albanese with Vaccaro taking the truck driver Kennedy into the stolen Rossi Buick to ride him around until word was received, through telephone contacts, that it was safe to release him. The evidence assigned to defendant Persico the

role of general organizer of the effort. Thus Mr. Persico, Vaccaro said, asked Spero whether he still had the stolen car, and, when Spero answered in the affirmative, directed him to get it and park it nearby in readiness for the hijacking. Vaccaro depicted defendant Mr. Persico as assigning defendant Spero the job of driving the truck, and as assigning to Albanese and Vaccaro the job of taking the driver and riding him around until he was to be released. Vaccaro testified that defendant Persico instructed Spero to take the stolen truck to LaFante's garage, advising defendant Persicq by telephone when he had done so so that defendants Persico and McIntosh could go to the garage and assist in the unloading. Vaccaro's testimony pictured defendant Persico as asking defendant McIntosh whether he had the Peter Butiglire driver's license still, and when defendant McIntosh reported that he did, then defendant Persico, Vaccaro testified, told the defendant McIntosh to hire a truck using the Peter Butiglire license. Vaccaro testified, too, that defendant Persico asked defendant Albanese whether he still had the pistol; that defendant Albanese explained that he had hidden it behind a radiator in the hallway of a tenement

house; that defendant Albanese got the pistol; that then Albanese, Spero and Vaccaro, got the stolen Rossi Buick automobile, drove it to the vicinity of Union and Nevins Streets, parked, and there waited for the truck to leave the Akers Terminal so that they could follow it. The hijacking followed much as planned. Later on July 28th the looted Akers truck was found parked on Eighth Avenue in Brooklyn.

The testimony of Mr. Cancelli relates to the license plates that legitimately belonged on the stolen Rossi Buick. There was testimony, not disputed, that Rossi owned the Buick on July 21, 1959, that it disappeared from in front of his house on that day, that he reported the disappearance to the police, that the license plate on the Buick was EK 3285, and that on the evening of the hijacking, July 23, 1959, Rossi found his car, but the license plates were then missing from it.

At the fifth trial (Tr. 3200-3219), Cancelli testified that defendant Ralph Spero at Ellenville, N.Y., offered Cancelli and his uncle the use of an automobile which defendant Spero said he had in Brooklyn and which Cancelli and his uncle would have to pick up and re-register for themselves. He testified that Thomas (not Ralph) Spero and

he then went to Brooklyn on a Friday and picked up a red and black 1953 Nash on 86th Street in Brooklyn, where it was delivered to them by Dominick Spero, another brother of Ralph Spero. Cancelli testified that he started back to Ellenville early on the following Monday morning driving the red and black 1953 Nash with license plates from the stolen Rossi Buick on it and that the Nash broke down on Route 52 near a restaurant at about five o'clock in the morning. A state trooper pushed the car along, and then signalled him to stop and exhibit the registration. Cancelli took a registration from the glove compartment of the car and handed it to the state trooper. The trooper found that the tags on the car did not correspond with the registration taken from the glove compartment. The state trooper then checked by radio, and learned that the tags on the Nash were those of the Rossi Buick that had been stolen on July 21, 1959 and recovered, stripped of its license plates, on the night of the hijacking, July 28th. Mr. Cancelli was, of course, arrested.

Mr. Cancelli testified further that later on he spoke to Ralph Spero when they both were at a Club located

not far from the place where the Buick had waited to see the Akers truck leave the terminal and not far from the Chateau Russo where the hijacking was allegedly planned. At the Club Mr. Cancelli testified that he said to defendant Spero:

"'Thanks for giving me a car that got me locked up.' And he said he was sorry."

He testified further that Mr. Persico was present and joined in the conversation. The following was his testimony about that:

"Q. And did Mr. Persico say anything to Mr. Spero in your presence?

A Yes, he gave him hell for giving me that car with the license plates on it.

Q Do you recall what Mr. Persico said?

* * *

Q Sir, would you tell us what Mr. Persico said?

A He said, "You were stupid in giving him that car with them license plates."

(Tr. 3213-3214)

Mr. Persico's cross-examination was:

"Q Mr. Cancelli, when you were in this club you complained to Mr. Spero quite loudly about him giving you a car with stolen license plates, is that right?

A Yes, sir.

Q And Mr. Persico said to him that was a very stupid thing for him to do after he heard what you said, isn't that right?

A Yes. That's possible."

The further cross-examination of Mr. Persico covered simply the point that Cancelli had been a witness at the fourth trial (some four years before the fifth trial) but not at any earlier trial.

The defendant Spero cross-examined principally for the purpose of attenuating defendant Ralph Spero's immediate connection with the episode, but asked the following question with the following effect (Tr. 3215):

"O Mr. Cancelli, when were you first interviewed about this case?

A Four years ago. [i.e., in 1964.]

Q Did you make any statement, give any statement to anyone about this case?

A I don't understand the question.

Q Was the interview reduced to writing by anyone?

A Yes, Ma'am.

Q · Who interviewed you?

A Officer -- what's his name -- by Bartells."

After questioning on other matters, counsel for defendant Spero returned to the topic of the pre-trial interview (Tr. 3218):

"Q Could you state the circumstances under which you came to be interviewed by Mr. Bartells?

A Picked up --

MR. EDELBAUM [defendant Persico's counsel]:

I object, your Honor, to the form of the question.

MR. CRESTEIN [Government counsel]: Objection, your Honor.

MRS. WOLFT: [Spero's counsel]: No further questions, your Honor."

Defendant McIntosh's counsel inquired about the most recent date of interview by anyone connected with the Government and was told that it had been in the preceding September (not less than seven months earlier). Then counsel continued (Tr. 3219):

"Q And in the course of that conversation were any threats made to you by anyone connected with the Government?

A No, sir.

Q Any threats made to anyone, any members of your family?

A No - sir."

The content of Mr. Cancelli's fifth trial testimony was predictable from the fourth trial. He was not cross-examined on the basis of what he had said at the fourth trial, and it is, therefore, an easy inference that his testimony at the fourth and fifth trials was the same. But Mr. Persico's counsel objected to his expected testimony (Tr. 3179):

". . . as in no way relevant to this case and outside the scope of this indictment."

Counsel then outlined the borrowing of the car, the arrest, and the discovery of the license tags from the stolen Buick. Then he continued his objection (Tr. 3181):

"And subsequently there's supposed to have been some social club in Brooklyn when the witness taxed Spero with having given him plates from the stolen car, and Mr. Persico was alleged to have been there and said, 'How can you be so stupid as to give him the plates of a stolen car?'

I submit that's all the testimony, and I submit that it's wholly irrelevant to the issue in this case."

The objection was overruled, and the testimony given.

The August 10, 1973 interview, reported in support of the present motion in question and answer form, identifies the witness as "Cancilli." After the questioner had asserted to Mr. Cancelli that, as he understood him, Cancelli at the trial had been telling a story and that "a Detective Bartel put words in your mouth to testify to?" and Cancelli had assented, the questioning proceeded in this way (Tr. 17):

"QUES: It is the truth. In other words, the testimony you gave at Carmine Persico's trial was not true?

CANCILLI: The only thing that was involved — the whole statement that I gave in that trial was truth as far as the car was. Beyond that, I don't know nothing about that. The only thing I did was pick up a car.

QUES: You testified, I believe, in the trial that there came a time when you went to a club --

CANCILLI: Right, right. On Third Avenue, right.

QUES: Was Mr. Persico present at that time?

QUES: Carmine Persico.

CAMCILLI: Yeah, Iknow who you're talking about. He was in the club, yeah.

QUES: He was in the club?

CANCILLI: See, I didn't go there to see him.

QUES: You didn't go to see him?

QUES: But he was there at the time?

Did he have any conversation

with you at all?

CANCILLI: Not with me, no.

QUES: No.

Did he make some comment? Did Carmine Persico make any comments at the time?

CANCILLI: Oh, Christ, it's so many

years. I didn't go there to see him.

QUES: Did you hear him say anything?

CANCILLI: Oh, Christ, it's so [obscenity]

long ago.

I really don't remember, to

tell the truth, if he said anything or not.

But I didn't go there to see

him. I went there to see another guy.

QUES: Who did you go to see?

CANCILLI: I went to see Ralph Spiro."

[Phon.]

Mr. Cancelli appears to have told his interrogators that Detective Bartels was at the same Club that night. Detective Bartels had carlier interviewed Mr. Cancelli while he was under arrest in the jail at Newburgh, New York in connection with the license plate episode. Mr. Cancelli explained that when he was arrested/the 1953 Nash he had with him a letter that he was supposed to have mailed for Ralph Spero, a personal lecter quite unconnected with the case, but which he had forgotten to mail; apparently the police had picked up the letter in the arrest. Apparently at that time Detective Bartels and the FBI men - according to Mr. Cancelli - made it very clear to him that they might well infer that he was connected with the hijacking if he was not forthcoming in his disclosures. Mr. Cancelli is quoted as telling the interrogators that Detective Bartels told him what to say (Tr: 23):

"That I was in the club the same time that he was in the club. I was present in the club the same time he was present in the club. That I was talking to Junior (Persico), which I wasn't talking to

Junior. I was talking to Ralph [Spero].

QUES: You never spoke to Junior at any time?

CANCILLI: Hello, goodbye; that's it.

QUES: You didn't hear Carmine Persico or Junior Persico make any comments or statements in the club?

CANCILLI: No.

QUES: Would you say that the testimony you gave at Carmine Persico's trial was not true?

CANCILLI: Basically, yeah.

QUES: That it's not true, it wasn't true?

CANCILLI: No, it wasn't true. I was scared to death, for Christ's sake. What would you do?"

Later the following question and answer appear (Tr. 25, 27):

"QUES: Well, what is the true story now? Suppose you tell us.

. CANCILLI: The true story, the only thing I did is pick up a lousy car that

this guy an uncle of mine, and I did him a favor to drive the sonuvabitch. It cost me time in jail, it cost me a fine, it cost me my license in New York — they revoked my license in New York — just to do a lousy [obscenity] favor. And the next thing I know, I don't hear nothing for a couple of years, then all of a sudden I have the F.B.I. call me up. I thought it was a gag when they called me up... and it was the F.B.I. And they told me ither I would come up there or they would come down here and get me.

Then they tell me there was two guys that wanted to see me. But they didn't say who they was or nothing. So when they held me up there and then these guys came on an airplane later that afternoon. And one was that detective.

QUES: Who came down on an airplane?

Detective Bartels and the Federal Prosecutor?

CANCILLI: Right. United States prosecutor, right.

* * *

QUES: Now, how did the Foderal prosecutor threaten you?

CANCILLI: The Federal prosecutor, they got a subpoena. They subpoenaed me to go to New York."

Insisting that he testified to what he was told to testify, he was then asked (Tr. 30):

"QUES: What did he tell you to say in court?

CANCILLI: Ch Christ. He told me to agree to say in court, well, that I seen the detective down there - Which I did see the detective down there. It was the only time I was in that place.

QUES: What else did he tell you to say in court?

CANCILLY: And - It's been so long ago.

QUESA Did he ask you to say that Mr.

Persico spoke to you in the club? Did he

CANCILLI: Well, he did say hello to me. That wasn't perjury there. It may -- he did say hello and goodbye.

QUES: That's all he said to you?

CANCILLI: He didn't have no conversation with me, no.

QUES: No conversation at all?

CANCILLI: No.

QUES: And you didn't hear Carmine
Persico make any statements or comments
in the club?

CANCILLI: No."

While Cancelli's Ealtimore statement of August 10, 1973 under questioning that can only be characterized as ardent, persistent and confusing is replete with assertions of coercion exerted upon him by Detective Bartels and the Federal Prosecutor, the specific pressure exerted kept vanishing under the effort to examine it. He rejected the idea that he was threatened with a marder prosecution because the 1953 Mash was nomehow commented with a marder, but he was rather clearer in indicating that Detective Bartels kept

insisting that unless he testified as the Detective wanted him to he would be implicated in the hijacking. There is not any genuine correspondence between what he did testify to and what he says was demanded of him by Detective Bartels. His Baltimore statement indicates that he actually spoke to the defendant Persico at the club, and his denial of his earlier testimony is limited to an attenuated and defensive denial that he overheard any remarks that Mr. Persico made and that he, personally, had any relevant conversation with Mr. Persico. His trial testimony was not that he ever spoke directly to Mr. Persico but that he did hear Mr. Persico characterize Spero's action in giving Cancelli a car with "them stolen license plates" on it as stupid. The probative relevancy of the testimony of Mr. Cancelli (Tr. 3214) depended entirely on whether the jury believed Mr. Cancelli and, if it believed him, did or did not infer that Mr. Persico was talking not an obvious generality but with specific reference to particular license plates that he knew were "hot" because he knew that they were connected with the Akers hijacking. The matter that Mr. Cancelli testified to did not unaquivocally implicate defendant Persico. It furnished an item of circumstantial evidence from which the jury could (depending

on the construction it put on the statement) infer a knowledge on Mr. Persico's part that tended toward corroboration of Vaccaro's story by demonstrating that four months after the hijacking Mr. Persico knew of Spero's guilty complicity in it and in the use of the stolen Rossi Buick, and could, therefore, have been the planner of the hijacking, as Vaccaro had asserted.

The John Curatella matter is quite another sort of thing. Mr. Curatella was in 1959 employed by Leonard Trucking Rental. On the morning of July 28, 1959, the record of Leonard, which Mr. Curatella produced and testified to, showed that Leonard leased a truck to a Peter Butiglire, 237-A Wyckoff Street, Brooklyn, New York, driver's license No. 655 4221. A Pontiac registration in the name "Peter Butiglire" of the same address, was found in the possession of Mr. McIntosh on August 13, 1959, when he was accosted by the police in the company of Mr. Persico outside the Chateau Russo Bar, in which, according to Mr. Vacqaro's testimony, Messrs. Persico, McIntosh and others had planned the Akers hijacking (Tr.3692-3607). A police officer testified that he, accompanied by Detective Dartels, had asked Mr. McIntosh (whom both the officer and Detective Bartels already knew as "flugh"

McIntosh") what his name was, that Mr. McIntosh gave the name Peter Butiglire, and that, when asked for identification, Mr. McIntosh produced the Peter Bitiglire auto registration.

237-A Wyckoff Street was the address of an apartment which had been leased

in the name of Peter Butiglire and was a place at which, under other testimony of Vaccaro, Mr. Spero (carrying samples of the loot) and Vaccaro met after the hijacking, and to which, Vaccaro testified, Mr. Persico came later on with another man apparently to examine the samples of the stolen material produced by Mr. Spero.

Mr. Curatella did not identify the defendant McIntosh as the Peter Butiglire who had rented the truck.

John Curatella testified (Tr. 3395-3441) that he worked part time for Leonard Truck Rental during July and thereafter in 1959, and that his working hours were from 6:00 in the morning until 8:00 or 9:00 in the morning.

Leonard Truck Rental was located on Sackett Street between Third and Fourth Avenues in the neighborhood of the Chateau Russo Bar and the Akers Terminal. Mr. Curatella produced a record book of Leonard undeniably kept in the regular course of Leonard's business. It showed by the date of use both advance reservations for truck and on-the-spot rentals of trucks and under date of July 28, 1959, recorded the lease of truck 727 to Peter Butiglire, giving the 237-A Wyckoff Street, Brooklyn address and the licease number of a Peter Butiglire driver's The entry was in Mr. Curatella's handwriting, and

he identified the Peter Butiglire license when it was exhibited to him in photocopy. He also identified the defendant McIntosh's early 1960 F.B.I. arrest photograph (never received in evidence) as a picture of the man to whom, nearly nine years before, he had leased the truck; he described the lessee of the truck. He was not asked to nor did he make a courtroom identification of defendant McIntosh, nor was the jury told whose picture he had identified.

On cross-examination by counsel for Mr. Persico, it was shown that Peter Butiglire (whose name as the entries went on was shortened to Peter Butt and whose license number was later omitted) had repeatedly rented trucks at Leonard Truck Rental. The witness was not pressed to make a court-room identification nor, in view of the line cross-examination took, was there any effort to emphasize the failure to make a courtroom identification.

If any impression emanates from the Curatella testimony it is that fear of or sympathy with or complicity with the defendants or some of them induced him to dilute his testimony as much as he could manage (see Tr. 3684). In view of the cross-examination, the witness's implied (in 1958) and presently asserted inability to have made a courtroom

identification does not suggest candor or forthcomingness on either occasion.

The Curatella affidavit is a protest that his failure to identify Mr. McIntosh as the police urged him to - on excellent grounds - was due to conscience. It is the affidavit that discloses, however, that he gave minimal testimony out of choice in circumstances in which his failure to identify Mr. McIntosh directly and straightforwardly is all but impossible to explain on grounds of truth telling.

testimony of Gaspar Vaccaro on this occasion takes the form of an affidavit of counsel that one Alphonse Castaldi, who was allegedly in prison with Gaspar Vaccaro in Texicana in December 1964, told the attorney that Gaspar Vaccaro had then said to Castaldi that he had been mistaken in his testimony but did not correct it because, after reporting the error to the Prosecutor, the Prosecutor warned him that Vaccaro's own position would be jeopardized if he changed his testimony. Vaccaro is said also to have said to Castaldi that Vaccaro's friends and relatives had given Vaccaro the same advice. Castaldi says that Vaccaro was then waiting release on parole and apparently the last

thing that Vaccaro said to Castaldi was that he would correct his mistake without telling Castaldi how he would go about it. In the light of the two earlier motions based on attacks on the Vaccaro testimony and their disposition, the present relation of the supposed Castaldi assertions is nugatory.

Defendant's critical contention is that enough has been put forward to require a hearing under 28 U.S.C. § 2255. See United States v. Kahn, 2d Cir. 1973, 472 F. 2d 272, 287-289; United States ex rel. Conomos v. LaVallee, S.D.N.Y. 1973, 363 F. Supp. 994, 1004; cf. Taylor v. United States, 2d Cir. 1973, slip opinions p. 304. The appellate determinations affecting this case now include 305 F. 2d 534 in 1962, 349 F. 2d 6 in 1965, 406 F. 2d 192 in 1969, 425 F. 2d 1375 in 1970, and the affirmances of the denials of applications for new trial based on newly discovered evidence and/or recantations (including recantation of certain of the testimony of Vaccaro himself) in 454 F. 2d 721, decided in 1972, and 467 F. 2d 485 in 1972 (affirming Judge Travia's decision in 339 F. Supp. 1077).

While the present motion is framed under § 2255 and fashioned as a claim of prosecutorial misconduct, that aspect of the application evaporates upon mere inspection. It is in reality a further motion for a new trial.

Specifically, and first, as to Mr. Cancelli: the pressures exerted upon him were nil. He was indeed and very properly arrested on November 23, 1959. Driving a car that had one part of its proper registration in it, but which was carrying not its own license tags but those, it was soon clear, of a stolen car, Mr. Cancelli also had in his possession a letter written by Ralph Spero which he was supposed to mail. A necessary inference from Detective Bartels' prompt interview of Mr. Cancelli while the latter was still at the Newburgh jail is that the highway incident was immediately connected with the Akers or some other hijacking which Detective Bartels was investigating. (See State Policeman Ryan's testimony at the fourth trial that the F.B.I. spoke to him in 1959 and again, with Detective Bartels in 1954, Tr. 7303, 7317.) Mr. Cancelli was certainly questioned, and he should have been, and apparently he was, warped that inadequate explanations would lead the police to infer that he was connected with the Akers hijacking or

other hijackings under investigation, and with the theft of the Rossi Buick. Mr. Cancelli's statements do not remotely suggest that improper pressures were brought to bear upon him by Datective Bartels in 1959 or by the Prosecuting Attorney and Detective Bartels in 1964. The only pressure clearly referred to was that exerted by the service upon him of a subpoena requiring his attendance at the trial. Mr. Cancelli's testimony does not suggest the existence of any pressure when he testified at the fifth trial. He swore that no threat was made against him when he was interviewed before trial, and that nobody had spoken to him in the period between September of 1967 and April of 1968 when he testified at the fifth trial. Pressure could hardly appear from the gap of over four years between his 1959 and his 1964 interviews with Detective Bartels and the Assistant United States, Attorney.

The further question is whether any credit attaches to Mr. Cancelli's statement to his interrogators with respect to his compliance with Detective Bartels' supposed request that he tell something other than the full truth. Mr. Cancelli's testimony at the fifth trial did not include the points that Detective Bartels had interviewed him at the time of his

arrest by the State police at Newburgh jail, and that he had later seen Detective Bartels at the Club near the Akers terminal and near the Chateau Russo where the hijacking was allegedly planned, and that he saw him there at a time when Ralph Spero and Mr. Persico were also in the Club and Mr. Cancelli was, possibly, reviewing with Mr. Spero the problems arising out of the State police incident. The closest scrutiny of Mr. Cancelli's statement leaves it quite uncertain how much of his testimony he wished cautiously to withdraw. It is not altogether plain that he is doing anything except colorably withdrawing, or blurring in diluted present recollection, his simple 1964 and 1968 testimony that Mr. Persico did make the remark to defendant Spero. The line Mr. Cancelli took on August 10, 1973, can not be called recantation.

The perhaps separate question whether there is anything to warrant an inquiry into the propriety of prosecutorial conduct is disposed of by the testimony taken at the fourth and fifth trials. There is no intimation that the Assistant United States Attorney know of any pressure from or instructions from Detective Bartels exerted on Mr. Concelli to get him twice to testify as he had testified.

The question comes down to Mr. Bartels' role. But Mr. Bartels was examined out of the jury's presence, although under oath, at the fourth trial (Tr. 7264-7275) about his 1959 and 1964 interviews with Mr. Cancelli; and about the statement given by Mr. Cancelli in 1964 during the interview in which the Assistant United States Attorney participated. Mr. Cancelli, too, was examined at the 1964 trial out of the jury's hearing (Tr. 7232-7262) about his 1964 interviews with John Hopkins, and then with Detective Bartels and the Assistant United States Attorney, as well as about his 1959 interview in the Newburgh jail with Detective Bartels. Mr. Cancelli estimated the length of the 1959 interview at half an hour (Tr. 7239), Mr. Bartels estimated it at fifteen minutes (Tr. 7275). At the fifth trial, in 1968, Detective Bartels was again examined, but not in the jury's presence; the examination was about the August 13, 1959, incident in which defendant McIntosh identified himself as Peter Bitiglire; Mr. Bartels testified that Mr. Persico was with Mr. McIntosh at that time (Tr. 3653-3661). There was, therefore, knowledge nine years ago about Mr. Cancelli's interviews, Mr. Bartels was interregated about them (as was Mr. Cancelli), and the Assistant United States Attornay (who conducted the

trials before the late Judges Abruzzo and Rosling) discussed his role in the interview on the record with the Court and defense counsel (Tr. 7233, 7257-7260).

The niggard testimony twice given by Mr. Cancelli does not suggest implanted police invention. Implanted police invention can never have been less damning or more vulnerable to the attack of irrelevancy and remoteness that defense counsel addressed to it. Mr. Persico's quoted remark could be thought of as entirely a generalization disclosing nothing except that he was a man of the world. It was at best, in the form given, a small tile in a large mosaic, the absence of which would scarcely be missed. The critical relevancy of Mr. Cancelli's testimony was that it implicated defendant kalph Spero and corroborated Mr. Vaccaro in connecting the Rocsi Buick with the hijacking.

A high degree of intrinsic improbability attends the assertion, if Mr. Cancelli is really saying that much, that Detective Bartels was the author of his testimony about Mr. Persico's remark.

The more real question is, How far does Mr. Cancelli go toward retracting his testimony? The conclusion from reading the whole of the testimony of the interrogation and listening to it played from the tape on a cassette tape recorder is that Mr. Cancelli was not genuinely confessing or asseverating that his words about Mr. Persico's statement were false and that Mr. Bartels had furnished the lie to him but, rather, that he was being a "nice guy" to interrogators who were transmitting to him insistent and persistent pressure built up by Sal Persico's visit, their own earlier visit, and their success in persuading Mr. Cancelli that he was responsible for the imposition on Carmine Persico, presented to Mr. Cancelli as an innocent man, of a 14-year prison sentence. A niggard in his in-court testimony, Mr. Cancelli is a niggard in his supposed withdrawal of a part of it. The overall impression of the transcript and of the tape recording is that Mr. Cancelli was trying still to secure every door against any attack on him while readying every door of escape for himself. Rejecting any intimation

that he had perjured himself at either trial, Mr. Cancelli in essence testified that he did not really have a genuine recollection in 1974 of what may or may not have been said in his presence in the Club in 1959 (August 10, 1973 transcript pp. 18, 30, 34, 35-36, 47). He reiterated that Ralph Spero was there, that he was there, that Detective Bartels was there, and that he, Mr. Cancelli, had himself spokento Mr. Persico, whom he had not earlier known (August 10, 1973, transcript pp. 12, 32, 40; in the fourth trial he testified to/Mr. Persico at Mr. Cancelli's uncle's Ellenville summer resort, Tr. 7195-7198), and had spoken to Ralph Spero whom he did know and whom he had gone to the Club to see. The rest of his testimony, the whole automobile episode vouched for by the autoptic proference of the motor vehicle registration, the plates, and the rest of it, as well as by the testimony of State Trooper Ryan, was irrefragable; Mr. Cancelli's interview left that intact.

The interview in net sum is self-defeating. The interview discloses that Mr. Cancelli did not at first deliver to his interrogators even the dubieties that he ultimately yielded. Scathing else was said first and other interventions than those of the interdegators apparently

occurred. Apparently, meanwhile, and from some source, the Government learned of an approach to Mr. Cancelli, made an inquiry of him, and received a denial of any approach (cf. 425 F. 2d at 1383). It is difficult to suppress the will toward drawing an inference of ugliness from this sequence of events; at minimum, the sequence does not counteract the feebleness of the interview.

The palliative testimony dubiously proffered is not sufficient in content, in the light of the other evidence in the case, including that of the witness Valachi, to found an argument that either the absence of the testimony attacked, or the addition of testimony along the lines of the interview, could have affected the result of the case as against Mr.

Persico. See United States v. Persico, 2d Cir. 1967, 457 F.

2d 485, aff'g. an opinion below 339 F. Supp. 1077, 10841085; cf. Giglio v. United States, 1972, 405 U.S. 150, 154;
United States v. Miller, 2d Cir. 1959, 411 F. 2d 825, 830;
United States v. Costello, 2d Cir. 1957, 255 F. 2d 876;
McBride v. United States, 10th Cir. 1971, 445 F. 2d 229, 232;
Evans v. United States, 7th Cir. 1959, 408 F. 2d 359, 370.

As the transcripts of the fourth and difth trials make clear,
Mr. Persico and his counsel had ample opportunity, and took

advantage of it, to explore the issue of the background of Mr. Cancelli's testimony in 1964, and in 1958 cut off inquiry when defendant Spero's counsel sought to reopen the issue in 1968. The issue is exhausted. See United States v. Persico, supra, 454 F. 2d at 722.

The Curatella affidavit is on its face, and when read against the record, valueless. Burns v. United States, 8th Cir. 1963, 321 F. 2d 893, 896-897. Even if it were true that Mr. Curatella genuinely could not identify Mr. McIntosh as the Peter Butiglize who had leased trucks from Leonard (and he was not asked to do so at the trial) or to identify the 1960 photograph of Mr. McIntosh as that of Butiglire, the Leonard truck lessee, as he now says he did only under prosecution urging, his failure of identification is among the suspicious trivia of the case. The critical evidence was the Leonard Rental book, the Butiglire registration and operator's license with the Wyckoff Street address on each, the incontrovertible testimony of Detective Hugh O'Brien to finding the Peter Butiglire registration on defendant McIntosh's person and to his hearing Mr. McIntosh identify himself as Peter Butiglire when Mr. McIntosh was accosted outside the Chateau Russo, sixteen days after the hijacking,

and Detective O'Brien's testimony of the difference in Mr. McIntosh's appearance in 1959 and 1968. The fact was that defendant McIntosh was then in the company of Mr. Persico and of Joseph Magnasco (Tr. 3650), originally a defendant in the present case; the case against him abated when he died by violence before the fourth trial.

called as a witness before the jury, both he and Detective Bartels were examined out of the jury's hearing (Tr. 3610-3661). The admissibility of the photograph was discussed (Tr. 3678-3684) and the picture was excluded from evidence under Simmons v. United States, 1968, 390 U.S. 377, 382-385, and Stovall v. Denno, 1967, 383 U.S. 293, 301-302 (Tr. 3663-3684). All that was before the jury was that Mr. Curatella had identified "a" picture as that of Peter Butiglire; court and counsel knew that it was a picture of Mr. McIntosh, but the jury was not so informed; the jury was instructed (at defendants' request) not to speculate about the identified as a picture of the lessee of the truck (Tr. 3684-3690).

Mr. Curatella's affidavit is wrong in its assertion that conscience and consultation resulted in Mr. Curatella's

declining to identify the picture that was shown to him. It can only be said that Mr. Curatella's affidavit recreates the atmosphere of untrustworthiness that in the courtroom emanated from his testimony.

The Mass affidavit, too, is without any value, apart from its complete testimonial incompetency. It relates to an assertion that Vaccaro made statements in December 1964 about mistakes in his testimony in the Akers hijacking case. The alleged Vaccaro assertion is recognizably that advanced with elaboration in 1972 and fully passed upon at the time by Judge Travia. United States v. Persico, 339 F. Supp. at 1080-1081, aff'd. on opinion below, 467 F. 2d 485. See Laughlin v. United States, D.C. Cir. 1972, 474 F. 2d 444.

Since the motion and the files and records of the case conclusively show that the defendant Persico is entitled to no relief, there is no basis for conducting a hearing on the matters put forward by the motion.

It is, accordingly,

ORDERED that the motion of defendant Persico to set aside the judgment of conviction and to discharge him or

grant him a new trial is denied in all respects.

Brooklyn, New York

January 3 , 1974

John F. Dooling.

U. S. District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Appendix have this day been mailed to Gino E. Gallina, Esquire, LENEFSKY, GALLINA, MASS & HOFFMAN, 30 Broad Street, New York, New York 10004, counsel for Appellant.

DATED: May 30, 1974

Shirley Baccus Lobel by Winipel Murphy Stiller Baccus Libel no Winhel Mayling SHIRLEY BACCUS-LOBEL, Attorney

Appellate Section Criminal Division

